

ORDINANCE NO. 8840 - DRAFT 2

AN ORDINANCE OF THE CITY OF LAWRENCE, KANSAS,
REPEALING EXISTING CHAPTER VI, ARTICLE 13 AND
ENACTING, IN ITS PLACE, CHAPTER VI, ARTICLE 13 OF THE
CODE OF THE CITY OF LAWRENCE, KANSAS, 2013 EDITION,
AND AMENDMENTS THERETO, PERTAINING TO
RESIDENTIAL RENTAL PROPERTY.

WHEREAS, it is the goal of the Governing Body of the City of Lawrence, Kansas, that all persons renting, leasing, subleasing, or letting dwelling units within the City have a habitable and safe place to live ~~and that residential rental property comply with the land development and property maintenance codes of the City;~~

Comment [M1]: Removed because list of violations has been narrowed.

WHEREAS, it is the goal of the Governing Body of the City of Lawrence, Kansas, to prevent and to remediate housing conditions that adversely affect the life, safety, general welfare, and health, ~~including the physical, mental, and social well-being;~~ of persons occupying residential rental property;

Comment [M2]: Removed because list of violations has been narrowed.

~~WHEREAS, it is the goal of the Governing Body of the City of Lawrence, Kansas, to enforce certain minimum standards for the maintenance of residential rental property, thus preventing blighted conditions;~~

Comment [M3]: Removed because blight conditions are handled through code enforcement elsewhere and this ordinance is focused on life-safety issues.

WHEREAS, it is the goal of the Governing Body of the City of Lawrence, Kansas, to prevent the overcrowding of residential rental properties by requiring that each dwelling unit comply with the occupancy limits established for the applicable zoning district;

~~WHEREAS, it is the goal of the Governing Body of the City of Lawrence, Kansas, to promote the availability of affordable housing in the City, to preserve the value of land and structures in the City and, ultimately, to protect and to foster the City's tax base; and~~

Comment [M4]: Removed because these objectives are broader than the narrow focus on life-health-safety.

WHEREAS, the Governing Body has determined that it can achieve each of those goals through the licensing and inspection of residential rental property within the City.

BE IT, THEREFORE, ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

SECTION 1. Existing Chapter VI, Article 13, of the Code of the City of Lawrence, Kansas, 2013 Edition, and amendments thereto, is hereby repealed in its entirety, it being the intent of the Governing Body that Section 2 of this Ordinance supersede it.

SECTION 2. Chapter VI, Article 13, of the Code of the City of Lawrence, Kansas, 2013 Edition, and amendments thereto, is hereby enacted:

ARTICLE 13. RESIDENTIAL RENTAL PROPERTY

6-1301 PURPOSE.

The Governing Body finds that, in order to advance the health, safety, and welfare of the residents of the City of Lawrence, Kansas, it is necessary to ~~regulate certain activities, including the renting, leasing, subleasing, or letting of license and inspect residential rental property within the City, all as more particularly set forth in this Article.~~

Comment [M5]: More accurately reflects scope of program, does not purport to regulate issues not directly related to health-safety issues.

6-1302 DEFINITIONS.

The following words, terms, and phrases, when used in this Article, shall, except where the context clearly indicates otherwise, have the following meanings:

(a) ~~"Code Official" shall mean the Code Enforcement Officer, anyone fulfilling the duties of the Code Enforcement Officer on either a temporary or permanent basis, or any designee of the City Manager, the Director of the Department of Planning and Development Services, or the Code Enforcement Officer.~~

(a) "Code Official" shall mean the person(s) who are employed by the City of Lawrence, Kansas as a Code Enforcement Officer, and who have received and been accredited by the International Code Council and trained to inspect Residential Rental Properties in accordance with this Article.

Comment [M6]: Public confidence necessitates assurances that Code Official will be a qualified person, with appropriate certifications and credentials.

(b) "Dwelling Unit" shall mean one room, or a suite of two or more rooms, designed for or used for living and sleeping purposes and having ~~only at least~~ one kitchen.

Comment [M7]: Some Dwelling Units have more than one kitchen—closes a potential loophole.

(c) "Let" shall mean to provide or to offer for possession or Occupancy a Dwelling Unit to a person, who is not the Owner thereof, for no consideration.

(d) "Licensee" shall mean any Owner licensed by the City under this Article to Rent or Let a Dwelling Unit.

(e) "Occupancy" shall mean residing or sleeping at a Dwelling Unit the majority of a person's time.

(f) "Owner" shall mean the individual or individual(s), natural or corporate, in possession of lawful title to real property. As used in this Article, Owner may also include any authorized agent of the possessor of lawful title to real property.

(g) "Premises" shall mean a lot, together with all buildings, structures, and appurtenances existing thereon, ~~regardless of zoning district.~~

Comment [M8]: Eliminates doubt as to applicability of Ordinance to all residential rental units.

(h) "Re-inspection" shall mean any subsequent inspection conducted for the purpose of verifying that any violations reported during an initial inspection have been corrected ~~and that the Residential Rental Property is compliant with the land development and property maintenance codes of the City.~~

Comment [M9]: Deleted to reflect narrower scope of inspections.

(i) "Rent" shall mean to provide or to offer for possession or Occupancy a Dwelling Unit to a person, who is not the Owner thereof, for consideration, pursuant to a written, oral, or implied agreement.

(j) "Resident Agent" shall mean any person or business entity, however organized, appointed by an Owner, who shall be responsible for compliance with this Ordinance and who shall have the authority to receive communications, service of process, summons, notices, and other legal process in behalf of the Owner.

(k) "Residential Rental Property" shall mean any Premises, having one or more Dwelling Units that are Rented or Let, whether for consideration or not, to one or more Tenants.

(l) "Tenant" shall mean any person who occupies a Dwelling Unit, other than the Owner, the Owner's immediate family (related by blood, marriage, or adoption), or any person residing with the Owner.

(m) ~~"Qualified Vacant Unit" shall mean any Dwelling Unit that is not currently occupied by a Tenant at the time of an inspection, which has not previously been inspected by a Code Official in the current inspection cycle applicable to the Premises.~~

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Comment [M10]: Incorporates concept of requiring inspection of vacant units first, creates defined term for use below.

- (a) No Owner shall Rent or Let to a Tenant, whether or not for consideration, a Dwelling Unit located on Residential Rental Property within the City without first obtaining from the Department of Planning and Development Services a Rental License for each Dwelling Unit.
- (b) In the case of multiple Owners of any Dwelling Unit subject to this Article, it shall be deemed sufficient for any one of the Owners to have obtained a Rental License for the Dwelling Unit.

6-1304

RENTAL LICENSE FEES.

- (a) All Owners obtaining a Rental License under this Article shall pay an annual Rental License Fee. The Rental License Fee shall be due at the time of application or renewal. The Rental License Fee shall not be prorated or refunded upon denial or revocation of a Rental License.
- (b) Recognizing that the costs to the City of registering multiple Dwelling Units of an Owner decrease on a per unit basis as the number of Dwelling Units increases, the City shall assess Rental License Fees according to the following schedule:
 - (1) 1-50 Dwelling Units: \$10.00 per Dwelling Unit.
 - (2) 51-100 Dwelling Units: \$500.00, or \$9.00 per Dwelling Unit, whichever amount is more.
 - (3) 101-150 Dwelling Units: \$900.00, or \$8.00 per Dwelling Unit, whichever amount is more.
 - (4) 151 or more Dwelling Units: \$1,200.00, or \$7.00 per Dwelling Unit whichever amount is more.

6-1305

RENTAL LICENSE APPLICATION.

Application for a Rental License shall be made to the Department of Planning and Development Services on a form provided by the Department for that purpose. ~~In addition to paying the Rental License Fee, the Owner, which form shall acknowledge that he or she is familiar with the occupancy limit for the zoning district in which the Residential Rental Property is located, be substantially identical to the form referenced as established in Chapter 20 of the City Code, and shall affirm that he or she agrees Appendix A to comply with those terms as well as the land development and property maintenance codes of the City this Article.~~ In addition, the Owner shall complete the application in full, in writing, and shall provide the following information:

- (a) The address of the Dwelling Unit and the approximate date of its construction.
- (b) The Owner's name, address, telephone number, cellular telephone number, and e-mail address.
- (c)
 - (1) If the Owner has a local address, within forty miles of the City, then he or she MAY appoint a person or management company, also within forty miles of the City, to serve as his or her Resident Agent by checking the appropriate box and by providing the name, company name, if any, address, e-mail address, ~~telephone number (if any), and cellular~~ telephone number of the Resident Agent. Any Resident Agent appointed by the Owner shall have actual authority to receive communications, service of process, summons, notices, and other legal process in behalf of the Owner.

Comment [M11]: Incorporates form rental license and eliminates irrelevant requirement to promise code compliance—codes must be complied with regardless of whether one agrees with them.

(2) If the Owner does not have a local address, within forty miles of the City, then he or she MUST appoint a person or management company, located within forty miles of the City, to serve as his or her Resident Agent by checking the appropriate box and by providing the name, company name, if any, address, e-mail address, ~~telephone number if any~~, and ~~cellular~~ telephone number of the Owner's resident agent. Any Resident Agent appointed by the Owner shall have actual authority to receive communications, service of process, summons, notices, and other legal process in behalf of the Owner.

(d) A statement as to whether the Dwelling Unit is Section 8 housing or ~~either~~ other subsidized housing and, if so, the date of its most recent inspection.

(e) The Owner's signature and the date of the application.

6-1306 **RENTAL LICENSE ISSUANCE; DENIAL.**

(a) The Code Official shall review each application for a Rental License. Within thirty (30) days of the application, the Code Official shall approve the application and shall issue to the Owner a Rental License, unless:

(1) The application is incomplete; or

(2) The application is determined to be fraudulent, to include a material misrepresentation, or to contain a false statement.

(b) If the application is determined to be deficient because it is incomplete under Section 6-1306(a)(1), including the failure to pay the Rental License Fee, the Code Official shall give notice to the Owner and permit the Owner fourteen (14) days therefrom within which to provide a completed application.

(c) If the application is denied under Section 6-1306(a)(2), or the Owner has failed to complete the application within the fourteen-day period of Section 6-1306(b), then the Code Official shall deny the application by giving Notice of Denial to the Owner or any Resident Agent. Notice of Denial shall be in writing, shall be mailed to the Owner or any Resident Agent, shall inform the Owner of the reason for denial with specificity (including documentation of all facts and proof supporting the Code Official's claims of an Owner's fraud or material misrepresentations), and shall state that the Owner has fourteen (14) days from the date of the Notice of Denial in which to file with the Department of Planning and Development Services any written Notice of Appeal in accordance with Section 6-1317.

Comment [M12]: Allegations of fraud are serious, and should be documented with specificity if asserted.

(d) The Code Official shall maintain a copy of the Notice of Denial in his or her files.

6-1307 **RENTAL LICENSE APPEARANCE; MAINTENANCE.**

(a) The Rental License shall be on official City of Lawrence, Planning and Development Services, letterhead and shall include the License number, the name of the Licensee and any Resident Agent, the address of the Dwelling Unit, and the expiration date of the Rental License. The form and substance of the Rental License and Consent Form (to be signed by all tenants) shall be substantially similar to the forms attached as Appendix B to this Article.

(b) The Rental License shall be maintained by the Licensee on the Premises, if possible, or at the Licensee's principal place of business, and shall be made available, upon request, to any Tenant of the Dwelling Unit or to the Code Official.

6-1308 **RENTAL LICENSE DURATION.**

Unless revoked in the interim, the Rental License shall be valid from the time that it is issued until midnight of its next Expiration Date, which shall be in accordance with the following schedule:

Registration Name Begins With:

A, B
C, D
E, F
G, H
I, J
K, L
M, N
O, P, Q
R, S
T, U
V, W
X, Y, Z

Expiration Date:

January 31
February 28
March 31
April 30
May 31
June 30
July 31
August 31
September 30
October 31
November 30
December 31

The first Expiration Dates shall be in year 2016, and any licenses issued in years 2014-15 shall be valid until the first Expiration Dates.

Comment [M13]: Eliminates possibility of super short-term licenses during 2014-15.

6-1309

RENTAL LICENSE RENEWAL.

- (a) In order to retain a Rental License for a Dwelling Unit, the Licensee must renew the Rental License on an annual basis. At least four weeks before a Rental License expires, the Code Official will mail to a Licensee or any Resident Agent a renewal Notice. To renew a Rental License, the Licensee must, BEFORE the Expiration Date set forth on the Rental License: (1) remit to the City the appropriate Rental License Fee and any Inspection Fee that may be due pursuant to Section 6-1311; (2) return the renewal stub to the Department of Planning and Development Services; and (3) the Dwelling Unit must have, unless otherwise exempted by this Article, have passed its most recent inspection.
- (b) There shall be assessed a \$5.00 late fee per Dwelling Unit for any Licensee who fails to renew his or her license BEFORE the Expiration Date and seeks to renew his or her Rental License after that date.

6-1310

INSPECTIONS.

- (a) In accordance with Section 6-1310(b), unless otherwise exempted by the terms of this Article, Residential Rental Property shall be inspected by the Code Official ~~approximately every three (3) years~~ according to a schedule established by the Director of the Department of Planning and Development Services, or his or her designee using an inspection form substantially similar to the form attached to this Article as Appendix C. If a Residential Rental Property is scheduled to be inspected during the ensuing year, then the Department of Planning and Development Services shall notify the Owner/Licensee at the time of licensing or at the time of renewal. It shall be the obligation of the Owner/Licensee to pay the Inspection Fee at the time of application or renewal. It shall also be the obligation of the Licensee to contact the Department of Planning and Development Services during the month of licensing or renewal to schedule an inspection of any Qualified Vacant Units and to coordinate with the Code Official regarding the inspection of any occupied Residential Rental Property. Failure to schedule and to complete an Inspection shall be grounds for revocation of a Rental License or denial of a Renewal Rental License, except in the case where inspections do not occur or are delayed due to a Tenant's failure or refusal to give the Code Official consent to conduct an inspection. The City acknowledges and agrees that Licensee shall have no obligation to require Tenants to grant such consent.

Comment [M14]: Licensee should have option of identifying Qualified Vacant Units for inspection.

Comment [M15]: Reflects commentary from City Comm'n meeting 12/3/13 indicating that no penalty for Tenant denial of consent and no mandate the Licensee obtain consent for the City.

- (b) The Code Official shall inspect 10%, rounded up to the next whole number, but not more than fifteen (15) of the total Dwelling Units licensed by the Owner/Licensee. If a Major Violation, as that term is defined in Regulations promulgated by the City Manager, is discovered on any Premises or in any Dwelling Unit inspected by the Code Official, then the Code Official may immediately, upon at least seventy-two (72) hours prior notice, inspect an additional 10%, rounded up to the next whole number, but not more than fifteen (15) additional of the Dwelling Units licensed by the Owner/Licensee. The cost for any additional inspections shall be the same as the Inspection Fee established at Section 6-1311(a) and shall be assessed to the Licensee.

Comment [M16]: Reflects City Commission commentary on 12/3/13

- (c) It is the policy of the Governing Body to minimize the inconvenience of inspections on Tenants. Therefore, notwithstanding anything in this Section 6-1310 or elsewhere in this Article to the contrary, it shall be the duty of the Code Official to prioritize the inspection of Qualified Vacant Units that are identified by the Licensee prior to the inspection of any occupied Dwelling Units licensed by the Owner/Licensee, and the Code Official is directed to accommodate the inspection of Qualified Vacant Units by scheduling inspections during vacancy periods, at the request of the Licensee.

Comment [M17]: Codifies preference for inspection of vacant units first.

- (d) Residential Rental Property that qualifies as New Construction or as Major Reconstruction, as those terms are defined in Regulations promulgated by the City Manager under Section 6-1323(a), shall be exempt from inspection for a period not to exceed six (6) years commencing on the date the Residential Rental Property passes its final building inspection. However, Residential Rental Property that qualifies as New Construction and Major Reconstruction must, upon completion of the construction or renovation, register each Dwelling Unit and obtain a Rental License for each Dwelling Unit in accordance with this Article.

6-1311 INSPECTION FEES; ADMINISTRATIVE FEES.

- (a) Except as may otherwise be provided, the Inspection Fee shall be \$50.00 per Dwelling Unit inspected. The Inspection Fee shall be remitted to the City ONLY in the year that the Dwelling Unit is scheduled for Inspection in accordance with Section 6-1310. The Inspection Fee shall be paid at the same time as the Rental License Fee or Renewal License Fee.
- (b) Any Licensee that fails to appear for a scheduled Inspection or Re-inspection or any Licensee that refuses consent at a scheduled Inspection shall be charged an Administrative Fee of \$25.00 per Dwelling Unit that was scheduled for Inspection. A scheduled Inspection or Re-inspection may be rescheduled with no less than seven (7) days' prior notice to the Code Official. There shall be no fee or penalty to the Licensee if an inspection must be rescheduled due to a Tenant's failure or refusal to give consent to the Code Official.
- (c) Any subsequent Re-inspection, required after the initial Re-inspection, shall be charged a Re-inspection Fee of \$50.00 per Dwelling Unit re-inspected, except to the extent of re-inspections necessitated by a Tenant's failure or refusal to give consent to the Code Official.

Comment [M18]: Consistent with CC commentary from 12/3/13

6-1312 INCENTIVE.

As an incentive to Licensees, if the Code Official reports no Major Violations, as that term is defined in Regulations promulgated by the City Manager this Article, on any Premises or in any Dwelling Unit inspected by the Code Official, then the Residential Rental Property licensed by that Owner/Licensee shall be exempt from inspection under Section 6-1310 for a period of six (6) calendar years. (Such exemption shall not apply to any inspection made as the result of a complaint within that exempted period). Any Dwelling

Comment [M19]: Reflects narrowed scope of inspections.

Unit or Residential Rental Property found to have one or more Major Violations shall not qualify the Owner/Licensee for the exemption.

6-1313

RIGHT OF ENTRY.

Absent exigent circumstances, whenever it is necessary to make an Inspection or to enforce any provisions of this Article, or whenever the Code Official has reasonable suspicion that there exists in any Dwelling Unit or on any Residential Rental Property subject to this Article, any condition or violation that makes such Dwelling Unit or Residential Rental Property unsafe, dangerous, hazardous, or a public nuisance, the Code Official shall have the right to enter the Premises or any Dwelling Unit thereon, at all reasonable times to inspect the same or to perform any duty imposed by this Article, provided that such entry is made in accordance with the law. If the Dwelling Unit or Residential Rental Property is occupied, then the Code Official shall first attempt to make contact with the occupant, present proper credentials, and request entry upon a minimum of seventy-two (72) hours prior written notice to the Tenant and the Licensee. If the Dwelling Unit or Residential Rental Property is unoccupied, the Code Official is unable make contact with the occupant Tenant, or if the Code Official is denied consent to enter by either the Tenant (in the case of an occupied unit) or the Licensee (in the case of an unoccupied unit), then the Code Official shall have the right to seek entry by way of an administrative search warrant or by any other lawful means, subject in every case to the Code Official's requirement of providing a minimum of seventy-two (72) hours prior written notice to the Tenant and the Licensee (except in the case of exigent circumstances).

Comment [M20]: Reflects commentary from 12/3/13 CC meeting.

6-1314

VIOLATIONS.

- (a) Failure to comply with any provision of this Article shall be deemed a violation of this Article;
- (b) Any violation of one or more of the following ordinances items to be inspected shall be a violation of this Article:

Comment [M21]: New list of narrower life-safety items need to be part of the Ordinance in order to ensure that "scope creep" does not occur during implementation of the program.

- (1) Property Maintenance Code (Chapter 9, Article 6)
- (2) The

MINOR VIOLATIONS:

- Required common/shared path of egress temporarily blocked or obstructed.
- Dirty furnace and/or filter
- Fungus that is most likely mold that is located on walls, ceilings, or floors (small area)
- GFCI receptacles need replaced or installed in wet areas, bathrooms and/or kitchens
- Smoke detector(s) inoperable
- Electrical Panel has open port or missing cover.

Comment [M22]: Proposed list of surviving "life-health-safety" issues.

MAJOR VIOLATIONS:

- Occupancy violation of the Land Development Code (Chapter 20 of City Code)
- Land use violation of the Land Development Code (Chapter 20 of City Code)

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- (c) Violations of the foregoing shall, in Regulations promulgated by the City Manager under Section 6-1323, for the purposes of the Incentive program established at Section 6-1312, be classified as Major Violations or Minor Violations.
- Backed up or collapsed sanitary sewer line

Temperature Relief Valve needs pipe to Drain

- Combustion "makeup" air requirement not met for gas furnace and/or water heater
- Missing or inoperable lock on exterior doors
- Egress requirement not met for bedrooms
- Electrical wiring that is exposed, frayed or faulty as defined by code
- Fire escape from 3rd story or higher not in place when required by code
- Fungus that is most likely mold that is located on walls, ceilings, or floors (large or multiple areas)
- Dryer or gas fired furnace and/or water heater not properly vented
- Heating facilities not provided in a habitable space or current heating facilities are inoperable, operating in an unsafe condition, or incapable of maintaining 68 degrees in habitable rooms
- Smoke detectors not present as required by code
- Holes in roof, large area with missing shingles, badly leaking roof
- Structural deficiencies that affect the structural integrity and safety of foundations, roof framing, stairs, ceilings, walls, flooring, porches, decks or balconies, etc.
- Window unit broken or missing, leaving dwelling interior open to the elements
- Windows within 6 ft. of grade with missing or inoperable locks
- Required common/shared path of egress blocked or obstructed
- Required emergency exit lighting and/or emergency lighting for common/shared path of egress missing or inoperable
- Stairs, guards or handrails serving required common/shared path of egress structurally unsound or hazardous

6-1315

OCCUPANCY LIMITS.

- (a) Occupancy limits for Dwelling Units in each zoning district are established at Section 20-601(d) of the City Code.
- (1) For the purposes of this Section, (A) children of a Tenant are not included in the Occupancy count and (B) a person shall be deemed to be living in a Dwelling Unit if he or she resides or sleeps at a Dwelling Unit a majority of that person's time.
- (b) Exceeding the Occupancy Limits shall be deemed a violation of this Article, except that violations of Occupancy Limits that occur without the Licensee's prior knowledge and consent shall not be deemed a Major Violation or otherwise affect such Licensee's eligibility for the incentive described in 6-1312.

6-1316

NOTICE OF VIOLATION.

- (a) Any Licensee of Residential Rental Property determined by the Code Official to be in violation of Sections 6-1314, 6-1315, or 6-1323(b) shall be sent a Notice of Violation. The Notice of Violation shall be served on the Licensee or Resident Agent by hand-delivery, by electronic mail, or by first class mail addressed to the Licensee or any Resident Agent. The Notice of Violation shall state:
- (1) The condition that has caused the alleged Violation(s);
- (2) Whether the alleged Violation is a Major Violation or a Minor Violation, as those terms are defined in Regulations promulgated by the City Manager;
- (3) Whether the Code Official seeks: (1) remediation, and the time remediation must be completed; (2) to place a Licensee on probation, or to extend a pre-existing probationary period, or (3) to revoke the Rental License; and

Comment [M23]: Clarifies that occupancy violations caused by Tenants without Licensee knowledge/consent doesn't automatically create violation against Licensee.

- (4) That the Licensee has fourteen (14) days from the date of the Notice of Violation to appeal the Notice of Violation by filing with the Department of Planning and Development Services a written Notice of Appeal in accordance with Section 6-1317.
- (b) Any Tenant of Residential Rental Property determined by the Code Official to be the cause of a violation of Sections 6-1314, 6-1315, or 6-1323(b) shall be sent a Notice of Violation. The Notice of Violation shall be served on the Tenant by hand-delivery or by first class mail addressed to the Tenant. The Notice of Violation shall state:
- (1) The condition that has caused the alleged Violation(s);
 - (2) That the Tenant shall remediate the alleged Violation(s) within thirty (30) days, unless exigent circumstances require immediate action, of the date of the Notice of Violation; and
 - (3) That the Tenant has fourteen (14) days from the date of the Notice of Violation to appeal the Notice of Violation by filing with the Department of Planning and Development Services a written Notice of Appeal in accordance with Section 6-1317.

No violation under this Section 6-1316(b) shall prejudice a Licensee, constitute a Major Violation, affect the Licensee's eligibility for incentives, or otherwise increase the Licensee's fees and expenses, all of such liability shall be entirely that of the offending Tenant(s).

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Comment [M24]: No Tenant-specific violation becomes a Licensee violation.

6-1317

APPEAL.

- (a) Any Owner/Licensee or Tenant aggrieved by the action of the Code Official in issuing a Notice of Denial or Notice of Violation shall have the right to appeal that action to the Building Code Board of Appeals. Such appeal shall be taken by filing with the Department of Planning and Development Services a Notice of Appeal within fourteen (14) days of the date of the Notice of Denial or Notice of Violation. The Notice of Appeal shall be in writing and shall set forth in sufficient detail why the Owner/Licensee or Tenant believes that the Notice of Denial or Notice of Violation was issued in error, or why the proposed penalty is excessive, inappropriate or unreasonable. After the Notice of Appeal is filed, the Building Code Board of Appeals shall set a time and place for a public hearing. Notice of Hearing shall be given to the Owner/Licensee in the same manner as the Notice of Denial or Notice of Violation. To prevail on appeal, the Owner/Licensee or Tenant must prove that it is more probably true than not true that the Notice of Denial or Notice of Violation was issued in error, or that (in the opinion of the Building Code Board of Appeals) the penalty for the alleged violation is excessive, inappropriate or unreasonable. If it fails to take formal action at the public hearing, the Building Code Board of Appeals shall, no later than thirty (30) days after the public hearing, issue its final order, which shall be transmitted to the Owner/Licensee, or any Registered Agent, or Tenant in the same manner as the Notice of Denial or Notice of Violation.
- (b) There shall be a \$25.00 Docketing Fee due and payable at the time that any Notice of Appeal is filed.
- (c) The filing of a timely Notice of Appeal under Section 6-1317(a) shall stay any administrative enforcement action under this Article until the Building Code Board of Appeals has issued its final order.
- (d) The decision of the Building Code Board of Appeals shall be the final decision of the City. Any Owner/Licensee or Tenant aggrieved by a final decision of the Building Code Board of Appeals shall have the right, in accordance with state law, to appeal that decision to the District Court of Douglas County, Kansas.

Comment [M25]: Proposed punishment needs to be reviewable as well as allegation of ordinance violation.

6-1318

PROBATION.

The Code Official or, in the case of an appeal from a Notice of Violation, the Building Code Board of Appeals, shall have the authority to place a Licensee on probation. The purpose of probation is to provide the Licensee a reasonable time to remediate any condition or conditions that cause(s) a violation of this Article. Probation may be conditioned to include reasonable reporting requirements, a reasonable time period to remediate violations, or other reasonable requirements necessary to bring the Residential Rental Property into compliance with the City Code. Failure to successfully complete any and all conditions of probation shall be grounds for revocation of a Rental License.

6-1319

REVOCATION.

The Code Official or, in the case of an appeal from a Notice of Violation, the Building Code Board of Appeals, shall have the authority to revoke a Rental License, but only when Major Violations render the Dwelling Units uninhabitable, unduly dangerous, or other circumstances that justify the immediate condemnation of the Dwelling Unit. In making that determination, the Code Official or the Building Code Board of Appeals shall take into account the severity of the alleged violation and all other relevant mitigating and aggravating circumstances, including, but not limited to whether or not the Licensee has had other revocations or convictions under this Article. Any revocation shall be effective, and no Rental License shall be issued for the Dwelling Unit, until the Dwelling Unit is re-inspected by the City Official and found to be in compliance with all applicable codes. Revocation of a license under this Section shall not be a bar to the re-issuance of such license to the Licensee, upon re-inspection by the City Official and confirmation that all Major Violations have been remedied.

Comment [M26]: Revocation of a license is a very serious, extreme remedy that should occur in appropriately serious situations. When such conditions are remedied, the Licensee should be entitled to renew/restore license. Otherwise risk of major displacement of citizens, rendering properties economically obsolescent.

6-1320

UNLAWFUL ACTS.

- (a) It shall be unlawful for any person to rent, lease, sublease, or let to a Tenant or Tenants, as that term is defined at Section 6-1302(l) of this Article, whether or not for consideration, a Dwelling Unit located on Residential Rental Property within the City without first obtaining from the Department of Planning and Development Services a Rental License.
- (b) It shall be unlawful for any person to rent, lease, sublease, or let a Dwelling Unit on Residential Rental Property within the City in violation of Sections 6-1314 or 6-1323(b) of the City Code.
- (c) It shall be unlawful for any Owner/Licensee to knowingly and intentionally violate Section 6-1315 of the City Code.
- (d) It shall be unlawful for any Tenant living in a Dwelling Unit subject to this Article to cause the Dwelling Unit to be in violation of Section 6-1314 or to be in violation of 6-1315 of the City Code. For the purposes of this section, "living in a Dwelling Unit" shall mean residing or sleeping at the Dwelling Unit a majority of the person's time.

6-1321

MUNICIPAL OFFENSE.

Engaging in any of the unlawful acts set forth at Section 6-1320 shall be a separate municipal offense. Any person violating a provision of Section 6-1320 of this Article shall, upon an adjudication of guilt or the entry of a plea of no contest, be subject to a minimum fine of \$500.00 and a maximum fine of \$2,500.00 for each unlawful act. The municipal court judge shall have no authority to suspend all or any portion of the minimum fine. The municipal court judge shall also have the authority to order any person, upon adjudication of guilt or the entry of a plea of no contest hereunder, to comply with the terms of this Article.

Comment [M27]: Judge should have power to suspend fine.

6-1322

GROUNDS FOR TERMINATION OF MUNICIPAL UTILITY SERVICES.

If, upon application by the Code Official and after a public hearing, the Governing Body finds, by Resolution, that continued occupancy or habitation of Residential Rental Property that is in violation of the provisions of this Article shall constitute a hazard to the public health, safety, and welfare and that the City's provision of water, sanitary sewer, and sanitation services is reasonably related to the ability to occupy or inhabit said Residential Rental Property, then the Governing Body shall direct the Code Official to serve a Certified Copy of the Resolution on the Owner/Licensee, any Resident Agent, and any Tenant(s) of the Residential Rental Property. After the Resolution is served, the Code Official shall have the authority to proceed with the disconnection of City water, sanitary sewer, and sanitation services at said Residential Rental Property. Disconnection of City services may only be ordered if the Governing Body finds specifically that disconnection of City services is necessary to deter occupation or habitation in a structure in which the public health, safety, or welfare is harmed or endangered by continued occupancy or habitation of the Residential Rental Property.

6-1323

REGULATIONS.

- (a) In order to protect the health, safety, and welfare of the community, the City Manager, or his or her designee, shall have the power to promulgate reasonable Administrative Regulations governing Rental Licenses and Inspections. Any Regulations promulgated in accordance with this Article shall be dated and shall be available for inspection by the public at the City Clerk's Office during reasonable business hours. A Licensee shall receive a copy of the Regulations at the time of the issuance of Rental License(s) or the renewal of Rental License(s).
- (b) The Licensee shall comply with all Regulations promulgated by the City Manager or is or her designee in accordance with this Article. Failure to comply with the regulations shall be deemed a violation of this Article under Section 6-1314.

- (c) All Regulations shall be consistent with this Article, and in the event of any inconsistency or ambiguity, the terms of this Article shall control and supercede the Regulations.

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Comment [M28]: Regulations should not be able to take on a life of their own.

6-1324

REVIEW OF FEES.

The Governing Body shall, from time to time, at its discretion, review the Rental License Fees, Inspection Fees, and Fines established by this Article and shall adjust them as may be necessary to fulfill the goals of this Article. 12, with the objective of operating this Article 12 at a break-even, revenue neutral level; provided, however, that the Governing Body shall obtain performance audits, financial data, and other quantifiable records prior to increasing the Fees imposed by this Article.

Comment [M29]: Program should not be used as way to supplement general funds to City, because it unduly increases Tenant costs.

6-1325

EXEMPTIONS.

The provisions of this Article shall not apply to the following:

- (a) Dwelling Units occupied by the Owner or solely by the Owner's immediate family (related by blood, marriage, or adoption).
- (b) In the case where the Owner is not a natural person, Dwelling Units occupied by a principal of the Owner.
- (c) Bed and Breakfasts, as that term is defined at Section 20-1763(2).
- (d) Campgrounds, as that term is defined at Section 20-1763(1).
- (e) Group Homes or Adult Care Homes, as those terms are defined at Section 20-1701.

- (f) Assisted Living, as that term is defined at Section 20-1701.
- (g) Extended Care Facility, Dependent Living Facility, or Nursing Care Facility, as those terms are defined at Section 20-1701.
- (h) Extended Stay Lodging, as that term is defined at Section 20-1701.
- (i) Greek Housing, including fraternity houses and sorority houses, as that term is defined at Section 20-1701.
- (j) Hotels or motels.
- (k) Owners of Section 8 housing, or other housing subsidized by the State or the United States, that is regularly inspected as part of the subsidy program and is being rented, leased, subleased, let, or otherwise being lived in by persons other than the Owner, must register each such Dwelling Unit and obtain a Rental License therefor in accordance with this Article. However, Owners of qualifying Dwelling Units are exempt from paying the Rental License Fee under Section 6-1304 for qualifying Dwelling Units and such Dwelling Units are exempt from Inspections under Section 6-1310.

SECTION 3. If any section, clause, sentence, or phrase of this ordinance is found to be unconstitutional or is otherwise held invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining parts of this ordinance.

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SECTION 4. After passage, approval, and publication, as provided by law, this ordinance shall be in full force and effect, commencing March 1, 2014. Notwithstanding the previous sentence, however, this ordinance shall terminate automatically and revert back to Chapter VI, Article 13 in effect as of the date hereof, unless the Governing Body elects to extend the effective date by affirmative vote before December 31, 2017.

Comment [M30]: In response to Commissioner Farmer's desire to enact a pilot program, a three year sunset provision provides a full cycle to test the system on a fully funded basis, with all ordinances adopted.

PASSED by the Governing Body of the City of Lawrence, Kansas, this ____ day of December, 2013.

APPROVED:

Michael Dever
Mayor

ATTEST:

Diane Trybom
Acting City Clerk

APPROVED AS TO FORM AND LEGALITY:

Toni R. Wheeler
City Attorney
